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August 4, 2014

Mr. Bruce H. Wolfe
Executive Officer
Mr. Kevin Brown
California Regional Water Quality Control Board -
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

**Re: Comments on Staff Report and Tentative Orders – Site Cleanup
 Requirements for 1643 and 1705 Contra Costa Boulevard, Pleasant Hill
 File Nos.: 07S0123 (KEB) and 07S0204 (KEB)**

Dear Messrs. Wolfe and Brown:

By letter dated July 2, 2014 the San Francisco Bay Regional Water Quality Control Board (the “Regional Board”) transmitted its Staff Report and Tentative Orders (Site Cleanup Requirements) for 1643 Contra Costa Boulevard and 1705 Contra Costa Boulevard, in Pleasant Hill; file numbers 07S0132 (KEB) and 07S0204 (KEB). Joseph J. Lee and Grace M. Lee, deceased (Grace Lee died in 1997), are among the parties named in the Tentative Site Cleanup Order (the “TSCO”) regarding 1643 Contra Costa Boulevard. We represent Joseph J. Lee and Grace M. Lee.

The Regional Board’s July 2, 2014 letter transmitting the Tentative Site Cleanup Orders sets an August 4, 2014 deadline for the submission of written comments to the Regional Board. We write to provide you with our comments.

Comment No. 1: There Is No Basis To Issue The TSCO Against Grace M. Lee, Because Grace Lee Passed Away On February 17, 1997 (More Than 17 Years Ago), And Thus, Is Without Capacity To Be Named In The TSCO Or To Respond To It In Any Way, If Named.

Grace M. Lee was the wife of Joseph J. Lee. Mrs. Lee passed away more than 17 years ago, on February 17, 1997. As a decedent, Grace Lee lacks capacity to be named in the TSCO, or to respond to it in any way if named. Without capacity, there is no basis on which the Regional Board may properly issue the TSCO against Grace Lee, and so, the TSCO must not be issued against her.

Comment No. 2: The TSCO Must Not Be Issued Against Joseph Lee and Grace Lee Because They Are Not “Dischargers” Under Water Code § 13304(a).

The Tentative Site Cleanup Order for 1643 Contra Costa Boulevard identifies 1643 Contra Costa Boulevard as a cleaners that operated within the Gregory Village Shopping Center, located at 1601-1699 Contra Costa Boulevard. The TSCO notes that the cleaners at 1643 Contra Costs Boulevard operated from that space from at least 1965 to the present, and that during this 49 years, it was known by various names, including “Gregory Cleaners”, “P&K Cleaners”, “Nob Hill Cleaners”, and “Park Avenue Cleaners”.

The TSCO names various individuals who reportedly operated the cleaners during its 49 year history, including: Joseph William O’Malley, Floyd G. Taylor, Alan Choi, Kauen Choi, Joseph Lee, and Grace Lee.

In this 49 year history of operations by the numerous individuals reported to have operated the cleaners at 1643 Contra Costa Boulevard, Joseph Lee and Grace Lee were only involved with the cleaners for 3 ½ years in the mid-late 1980s. Specifically, Joseph Lee and Grace Lee were lessees of the premises known as 1643 Contra Costa Boulevard, Pleasant Hill, CA from about August 1, 1984 to about March 6, 1988, but they only ran the garment cleaners - called P&K's Cleaners - that was located at that address, for about 3 years, from about August 1, 1984 to about December 21, 1987.¹

¹ Inconsistent with this paragraph, the TSCO inaccurately indicates the period of Joseph Lee and Grace Lee’s involvement with the cleaners. (See, for example, TSCO at

The TSCO names Joseph Lee and Grace Lee (along with Joseph William O'Malley, Floyd G. Taylor, Alan Choi, and Kauon Choi) as dischargers "because of substantial evidence that they discharged pollutants to soil and groundwater at the Site". (TSCO at p.3) The TSCO does not refer to any specific evidence or discharge event, but rather, states:

"[I]t is common knowledge that releases occurred during routine operations involving chlorinated solvents in dry cleaning; these same pollutants are present in soil and groundwater directly beneath and in the immediate vicinity of the dry cleaner; and these same pollutants are present in groundwater at and downgradient of the dry cleaner in concentrations that generally diminish with distance. Each of these dischargers new of the discharge or activities that caused the discharge, and each had the legal ability to control the discharge during their respective period of operating the dry cleaner." (TSCO at p.3)

Contrary to these allegations, and other similar allegations in the TSCO, during Joseph Lee and Grace Lee's short three year tenure running the cleaner, neither they, nor anyone else that worked there, did anything to cause or contribute to the contamination, nor release or dispose of any chemical or cleaner. All chemicals and cleaners utilized were properly and carefully stored, handled, used, and disposed of, and no evidence has been identified by the Regional Board or anybody else to suggest otherwise. Similarly, no evidence has been identified by the Regional Board or anybody else to suggest that Joseph Lee, Grace Lee, or anyone else that worked with them, ever released, discharged, or disposed of any chemical, cleaner, or waste into the environment.

The Porter Cologne Water Quality Control Act ("Act") is codified in the California Water Code at section 13000, et seq. Section 13304 of the Act allows the Regional Board to issue cleanup and abatement orders, but only to a person who has:

"[D]ischarged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance" (Water

Code § 13304(a.)

As discussed above, Joseph Lee and Grace Lee never discharged waste or caused or permitted waste to be discharged into the environment during their short 3 ½ year tenure at 1643 Contra Costa Boulevard. Thus, when the Regional Board issues its final version of the TSCO, it should not be issued against Joseph Lee and Grace Lee, and they should not be named in it, nor identified in it as “Dischargers”.

Comment No. 3: Joseph Lee and Grace Lee Have No Access To The Site Which Is Owned By Gregory Village Partners, L.P., And, Thus, Joseph Lee and Grace Lee Have No Ability To Comply With The TSCO Or Conduct The Tasks Ordered Therein.

As noted in the TSCO, Gregory Village Partners, L.P., is the owner of the Site, and has been since approximately 1998. Thus, Joseph Lee and Grace Lee have no ability to access the Site. Without access to the Site, the Joseph Lee and Grace Lee lack the ability to conduct the tasks set forth in the TSCO. Thus, even if the Joseph Lee and Grace Lee had the ability to respond and conduct the ordered tasks (which they don’t – see discussion below), they could not do so as a result of its total lack of access to the Site.

For this reason, the TSCO should not be issued against Joseph Lee and Grace Lee, since, from this practical standpoint, they simply won’t be able to respond to it, or comply with it.

Comment No. 4: Joseph Lee and Grace Lee Do Not Have The Ability to Comply With The TSCO Because They Do Not Have The Resources or Insurance To Do So.

Joseph Lee and Grace Lee do not have sufficient financial resources to comply with the TSCO, nor do they have insurance coverage to enable them to comply with it. There is no coverage for administrative cleanup and abatement orders under your typical CGL insurance policy. Administrative orders are not “suits” triggering a defense, nor “damages” triggering an indemnity obligation. (See *Foster-Gardner, Inc. v. National Union Fire Ins. Co.* (1998) 18 Cal.4th 857, and *Certain Underwriters at Lloyd's of London v. Sup.Ct. (Powerine Oil Co., Inc.)* (2001) 24 Cal.4th 945.) Policies in this time period (i.e. post early 1970's policies) do not define suits to include administrative orders, and hence, no defense or indemnity obligation exists.

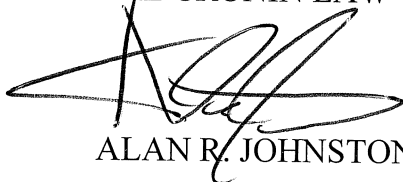
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For this additional reason, the TSCO should not be issued against Joseph Lee and Grace Lee, since, from a financial/insurance standpoint, they simply won't be able to respond to it, or comply with it.

Thank you for your attention to this matter. And again, please do not hesitate to call us with any questions/comments you may have, or in the event you need further information from us.

Very truly yours,

THE CRONIN LAW GROUP

A handwritten signature in black ink, appearing to read 'A. Johnston', is written over the printed name.

ALAN R. JOHNSTON

ARJ/kb